Dated: December 24, 1964.

FLOYD F. HEDLUND,
Director,
Fruit and Vegetable Division.

[F.R. Doc. 64-13444; Filed, Dec. 29, 1964; 8:51 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Subtitle A—Office of the Secretary of Commerce

PART 3—RULES OF PROCEDURE FOR HANDLING CONTRACT APPEALS

Part 3 is added to Title 15 of the Code of Federal Regulations to read as follows:

Sec.
3.1 Scope and authority.
3.2 Purpose.
3.3 How to begin an appeal.
3.4 Duties of Contracting Officer and Government Counsel.
3.5 Duties of Board upon receipt of notice of appeal.
3.6 Service of papers.
3.7 Appellant's statement of claim.
3.8 Answer.
3.9 Prehearing conference.
3.10 Depositions, interrogatories, production of documents.
3.11 Settlement.
3.12 Hearings.
3.13 Decisions.
3.14 Reconsideration.
3.15 Optional accelerated procedure.
3.16 Extensions of time.

AUTHORITY: The provisions of this Part 3 issued under R.S. 161; 5 U.S.C. 22, Department Order No. 106 (Revised), 25 F.R. 2603, 3-26-60.

§ 3.1 Scope and authority.

(a) The standard forms of construction, supplies and services contracts used within the Department of Commerce contain provisions to the effect that disputes arising thereunder and not disposed of by agreement shall be decided by the contracting officer, subject to appeal by the contractor to the head of the Department, i.e., the Secretary of Commerce. This is a contractual method of resolving disagreement and can be invoked only where and to the extent a contract so provides.

(b) Pursuant to Revised Statutes, section 161 (5 U.S.C. 22) and sections 2 and 4 of Reorganization Plan No. 5 of 1950 (5 U.S.C. 133z-15), the Secretary has established an Appeals Board (Department Order No. 106 (?) 25 F.R. 2603, 3-26-60), within the Office of the Assistant Secretary for Administration, and has delegated to this Board authority to consider and decide disputes under contracts entered into by the several bureaus (other than the Maritime Administration) within the Department. There is no further administrative appeal within the Department of Commerce from decisions of the Board. (The Secretary has also authorized the Board to consider appeals from the public in respect to certain specified administrative and regulatory actions within the Department, e.g., under the Export Control Act, Parts 382 and 383 of this title, Defense Production Act, Regs. 5 under Chap. VI of Title 32A, and Surplus Property Disposal Act, § 401.13, Chap. IV of Title 44.)

(c) The Appeals Board consists of a full-time Chairman and fifteen (15) to twenty (20) departmental officials specially qualified to serve as members and designated as such by the Secretary. The Chairman is the administrative head of the Board and is authorized to assign each matter on appeal to a panel of three (3) Board members. The Chairman may serve as a member of each panel, but in the event of his absence or unavailability for any other reason he may designate another Board member to serve in that capacity.

§ 3.2 Purpose.

It is the purpose of these procedures to provide for impartial, inexpensive, and expeditious handling of contract appeals, consistent with the contract terms and other requirements of law, the orderly conduct of the proceeding, and the necessity for making a complete record.

§ 3.3 How to begin an appeal.

(a) An appeal from the findings of fact and determination of the contracting officer shall be made by notice in writing in the manner and within the time specified in the contract.

(b) The notice of appeal shall indicate that an appeal is intended, identify the contract and the contracting officer, and the particular findings of fact and determination from which the appeal is taken. It shall be signed by appellant personally, if an individual, or if not, by an authorized officer of the appellant organization or by the appellant's attorney. The supporting statement of claim referred to in § 3.7 may be filed with the notice of appeal or it may be filed as set forth in § 3.7.

§ 3.4 Duties of Contracting Officer and Government Counsel.

(a) Promptly upon receipt of a copy of the notice of appeal, the contracting officer shall notify and request the legal adviser of the agency administering the contract involved to designate a Government counsel to represent the interests of the Government. The Government counsel shall promptly file notice of appearance with the Appeals Board.

(b) Within thirty (30) days after receipt of the notice of appeal, the contracting officer shall compile and transmit to the Government counsel an appeal file consisting of:

(1) The findings of fact and determination and all documents upon which his decision was based;

(2) The invitation for bids, the contract, and all plans and specifications, amendments, change orders, directives, supplemental agreements, and work order records related to the dispute;

(3) Substantive correspondence between the parties;

(4) Map or other descriptive material of the subject matter.

(c) The Government counsel will forward the appeal file to the Board, and so advise the appellant and that it may be examined at the office of the Board or the contracting officer.

§ 3.5 Duties of Board upon receipt of notice of appeal.

Upon receipt of notice of appeal, the Appeals Board shall docket the case by giving it an appropriate number and shall send a notice of receipt and the docket number to the Government counsel, the appellant and his attorney. A copy of the Board rules of procedure will also be sent to appellant and his attorney.

§ 3.6 Service of papers.

A copy of all statements, pleadings, briefs and any other documents and data of whatever nature, except the appeal file, shall be served on the other party at the time of filing with the Appeals Board.

§ 3.7 Appellant's statement of claim.

Within thirty (30) days after the mailing or filing of a notice of appeal appellant shall file with the Appeals Board a concise and detailed statement of the nature and amount of each claim, the reasons why the contracting officer's determination in respect thereto is deemed erroneous, and any documentation upon which he relies.

§ 3.8 Answer.

(a) Within thirty (30) days after receipt of the appellant's statement of claim, Government counsel shall prepare and file with the Appeals Board an answer setting forth the Government's position on each claim and the reasons therefor.

(b) Upon request made within ten (10) days, the Board shall afford the appellant a reasonable opportunity to file a statement in rebuttal of the Government's answer.

§ 3.9 Prehearing conference.

The Appeals Board may require the parties to appear for a conference to consider agreement and simplification of the issues, possible stipulations as to facts and documents, limitation of the number of expert and other witnesses, and any other matters that may assist in the disposition of the appeal.

§ 3.10 Depositions, interrogatories, production of documents.

The Appeals Board may consider requests for permission to take the testimony of any person by deposition, to serve written interrogatories upon the opposing party, and to produce and permit the inspection of designated documents. Such requests shall be approved only to the extent and upon such conditions as the Board in its discretion considers to be consistent with the objective of securing a fair, expeditious and inexpensive determination of the dispute on appeal.

§ 3.11 Settlement.

Whenever at any time it appears that appellant and Government counsel are in agreement as to disposition of the dispute, the Appeals Board may suspend further processing of the appeal in order to permit settlement by the contracting officer or other proper authority.

§ 3.12 Hearings.

(a) The Appeals Board will provide an oral hearing unless waived by both par-

ties, and will give the parties at least thirty (30) days' notice of the time and place of the hearing. Hearings will be held in Washington, D.C., unless there is, in the Board's judgment, a special and substantial justification for holding the hearing elsewhere.

(b) Witnesses at hearings will not be required to testify under oath. However, the presiding officer will call to the attention of each witness that his statements are subject to the provisions of Federal law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any Government department or agency. All witnesses may be examined or cross-examined by the Board members, the parties or their representatives.

(c) Both parties may offer oral and written evidence, subject to exclusion, in the presiding officer's discretion, of irrelevant, immaterial or unnecessarily repetitious evidence. The probative value of all evidence received will be determined by the Board. Testimony at hearings shall be reported verbatim.

(d) Post-hearing briefs may be submitted by either party or required by the Board, and appropriate rebuttal arrangements may also be authorized by the Board.

§ 3.13 Decisions.

(a) All decisions of the Appeals Board shall be based solely on the record made before it, and the Board may decide all questions of fact and law arising under the provisions of the contract in question. Under the provisions of the so-called Wunderlich Act, 68 Stat. 81 (1954), 41 U.S.C. sections 321 and 322, a departmental decision on a question of fact arising under a contract disputes clause is declared to be final and conclusive and not subject to judicial review "unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence." A Board decision on a question of law, on the other hand, is subject to full judicial review.

(b) The decision of a majority of the panel in a particular case constitutes the decision of the Board. Decisions will be made in writing and copies furnished to all parties. All decisions will be available to public inspection except those required for good cause to be held confidential to the parties and not cited as precedents.

§ 3.14 Reconsideration.

Requests for reconsideration may be made by either party within thirty (30) days from the date of receipt of its copy of the Board's decision. Such requests will be considered only upon a showing of significant error or on the basis that new and material evidence has been discovered. The other party will be afforded a reasonable time to oppose such request for reconsideration, and the Board will as soon as practicable thereafter rule on the request. Failure to request reconsideration shall not be deemed to be a failure to exhaust administrative remedies.

§ 3.15 Optional accelerated procedure.

If the amount involved in an appeal is relatively small or the appeal otherwise specially lends itself to expeditious consideration, the Appeals Board may, with the concurrence of the parties, reach a decision on the basis of the available record as furnished by the parties. Such appeals will be decided as soon as practicable without regard to their normal position on the docket and in such summary form as may be appropriate.

§ 3.16 Extensions of time.

Upon request, time extensions may be granted by the Appeals Board except with respect to the filing of the notice of appeal.

Effective date. The provisions of section 4 of the Administrative Procedure Act (5 U.S.C. 1003) which require notice of proposed rule making, opportunity for public participation, and delay in effective date are not applicable because these rules relate to agency management and public contracts. Accordingly, these regulations shall become effective upon publication in the FEDERAL REGISTER, and except as otherwise directed by the Chairman of the Appeals Board they shall not apply to appeals which have been docketed prior to that date.

Dated: December 22, 1964.

NATHAN OSTROFF,
Chairman, Appeals Board.

[F.R. Doc. 64-13414; Filed, Dec. 29, 1964; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER E—AIRSPACE [NEW]

[Airspace Docket No. 64-SO-70]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

Alteration of Control Zone

The purpose of this amendment to § 71.171 of the Federal Aviation Regulations is to alter the time of designation of the Winston-Salem, N.C., control zone.

The Winston-Salem control zone is presently designated as a full-time control zone. The United States Department of Commerce intends to discontinue the Weather Bureau Office located at Smith-Reynolds Airport, Winston-Salem, N.C., on or about March 4, 1965.

Therefore, action is taken herein to reduce the time of designation of the control zone to coincide with the operating hours of the Winston-Salem Airport Traffic Control Tower.

Since the change effected by this amendment is less restrictive in nature than the present requirements and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and it shall become effective 0001 e.s.t., March 4, 1965.

In consideration of the foregoing, the following action is taken:

In § 71.171 (29 F.R. 1101, 29 F.R. 16245) the Winston-Salem, N.C., control zone is amended to read:

WINSTON-SALEM, N.C.

Within a 5-mile radius of Smith-Reynolds Airport (latitude 36°08'00" N., longitude 80°-13'20" W.), effective from 0700 to 2300 hours, local time daily.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a))

Issued in East Point, Ga., on December 18, 1964.

PAUL H. BOATMAN,
Acting Director,
Southern Region.

[F.R. Doc. 64-13391; Filed, Dec. 29, 1964; 8:45 a.m.]

[Docket No. 6403; Amdt. Nos. 91-11; 127-1; 129-1; 135-2; 141-1; 171-1]

[Special Civil Air Regulations 330, 389B, 395B, 397, 399D, 407, 411B, 426, 430, 431, 433, 446B, 448A, 450A, 454A, 456]

[Special Federal Aviation Regulations 12, 13, 14, and 15]

PART 91—GENERAL OPERATING AND FLIGHT RULES

PART 127—CERTIFICATION AND OPERATION OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

PART 129—OPERATIONS OF FOREIGN AIR CARRIERS

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT

PART 141—PILOT SCHOOLS

PART 171—NON-FEDERAL NAVIGATION FACILITIES

Miscellaneous Amendments

The purpose of these amendments is to complete the remainder of the Agency's recodification program. The program was first announced in Draft Release 61-25, published in the FEDERAL REGISTER on November 15, 1961 (26 F.R. 10698).

All Civil Air Regulations in Chapter I of Title 14 of the Code of Federal Regulations will have been replaced with the issue of Part 121 of the Federal Aviation Regulations. That part is being issued separately and will become effective at the same time as these amendments.[1]

The recodification of the regulations in Chapter III (Regulations of the Administrator) of Title 14 and the Special Civil Air Regulations is completed with the issue of the following miscellaneous amendments to Chapter I of Title 14. No regulations of the FAA will remain in Chapter III. Henceforth, all Federal Aviation Regulations and Special Federal Aviation Regulations will be contained in Chapter I of Title 14 of the Code of Federal Regulations.

Section 406.17(a) of the Regulations of the Administrator provided authority for the operation of a "true light" as an aid to air navigation. Under the Federal Aviation Regulations, such a pro-

[1] To be published in the FEDERAL REGISTER of Thursday, December 31, 1964.

vision belongs in Part 171—"Non-Federal Navigation Facilities". Therefore, a new Subpart D is being added to Part 171, recodifying § 406.17(a) of the Regulations of the Administrator.

This addition to Part 171 completes the recodification of Part 406 and enables the Agency to delete the Regulations of the Administrator in Chapter III of Title 14 of the Code of Federal Regulations. All other parts in this chapter have been previously recodified. Those sections of Part 406 neither heretofore recodified nor being recodified in Part 121 have been determined to be surplusage. Their substance either duplicates other provisions in the Federal Aviation Regulations or is advisory only.

In an attempt to limit the use of "special" regulations to those occasions of temporary or peculiar regulatory need, this amendment deletes certain Special Civil Air Regulations (SRs) of indefinite duration and incorporates them into the Federal Aviation Regulations:

1. SR 330 is being recodified by including its substance in a new § 141.31, "Special Flight Instruction for Military Personnel of a Foreign Government".

2. SR 389B is being recodified by including its substance in a new § 91.47, "Emergency exits for airplanes carrying passengers for hire".

3. SR 411B, as applicable to foreign air carriers, is being recodified by including its substance in a new § 129.23, "Transport category cargo service airplanes: increased zero fuel and landing weights".

4. SR 448A, except for paragraph (2), is being recodified by including its substance in a new § 91.8, "Prohibition Against Interference with Crewmembers".

5. SR 456 is being recodified by including its substance in a new § 91.103, "Operation of Civil Aircraft of Cuban Registry".

Part 121 of the Federal Aviation Regulations will contain the substance of SR 411B as it applies to air carriers other than foreign air carriers.

Because the applicability of neither SR 389B nor SR 448A(1) was restricted to operation within the United States but in effect, extended throughout air commerce, § 91.1 is being amended to except new §§ 91.47 and 91.8 from applicability only within the United States. Also included within this exception are two other sections already in Part 91. These sections, §§ 91.19 and 91.45 as originally recodified, were limited in applicability by § 91.1, to within the United States. The applicability provisions of those Civil Air Regulations from which these sections were recodified were not so limited. The effect of the new exception in § 91.1(c), is to relieve the four specified sections from the geographic limitation of § 91.1(a). It should also be noted that this exception is limited to aircraft of U.S. registry. Clarifying provisions are being added to new § 91.1 (c) to assure that, for the purposes of the excepted sections, there can be no regulatory conflict for U.S. registered aircraft operating in foreign countries or over the high seas. In addition, the word order in § 91.1(a) is being revised to show more clearly that the exception refers only to the limitation of the part's applicability to operations within the United States.

Paragraph (2) of SR 448A dealt with the prohibition against carrying a dangerous weapon while on board air carrier aircraft. Since its applicability extended only to air carrier aircraft, SR 448A(2) is being recodified by adding §§ 121.585 (to be issued separately) and a new 135.64. Section 127.227(c) already reflects SR 448A(2). Since SR 448A(1), which was the basis for paragraphs (a) and (b) of § 127.227, is hereby being recodified as § 91.8, § 127.227 is being amended to delete those paragraphs. In addition, § 127.139 is being clarified by adding to it a definition, taken from CAM 40.241–1, of "directly in charge". This definition reflects the sense in which the term is used in this section and in § 121.378, where it will also be added.

The following Special Civil Air Regulations are being deleted, because each has accomplished its intended purpose and is no longer necessary: 395B 430; 431; and 433. Because the geographic applicability of § 91.19 is being extended by amendment of § 91.1, SR 446B may now be deleted. SR 450A has not been recodified since it will lapse of its own force on February 1, 1965. In addition, SR 397, which in effect was an exemption from the Civil Air Regulations, rather than a regulation, is being deleted. In its place the Agency is issuing separately, a grant of exemption from the Federal Aviation Regulations for aircraft and airmen engaged in operations conducted for the United States Forest Service.

Certain Special Civil Air Regulations are being redesignated as Special Federal Aviation Regulations (SFARs). These are former SRs 399D, 407, 426, and 454A.

Of these, the first deals with the maximum certificated weight for airplanes operated in Alaska by Alaskan air carriers, air taxi operators, and the Department of the Interior. This regulation becomes SFAR 12 and its expiration date remains October 25, 1965.

SR 407 provides for approval of modified Douglas DC–3 and Lockheed L–18 type airplanes, and SR 426 provides for performance credit for transport category airplanes equipped with standby power. The present expiration date of each is indefinite. They are being redesignated as SFAR 13 and 14, respectively. One reason for not recodifying them into the basic FARs is that the need for each regulation has diminished over the years and is now quite limited. In addition, neither SR belonged in any one part of the Federal Aviation Regulations. In light of these peculiarities and since a special regulation does not differ in legal effect from any other regulation, the Agency determined to redesignate SR 407 as SFAR 13 and SR 426 as SFAR 14.

SR 454A provides for operation over certain areas of Florida and adjacent waters. In view of the significant tie of this regulation with National Defense interests and the international political atmosphere, either of which could change on very short notice, the Agency finds that National Defense and safety in air commerce are best served by redesignating SR 454A as SFAR 15.

In addition, it is no longer necessary to use the word "[New]" when referring to a part of the Federal Aviation Regulations. This is possible because all Civil Air Regulations in Chapter I of Title 14, with the issue of Part 121, have now been replaced by Federal Aviation Regulations.

None of these amendments impose an additional burden on any person. Some are clarifying in nature, while most simply restate the substance of the specified regulations. Because of this I find that notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Title 14 is amended by striking out the Regulations of the Administrator in Chapter III and by amending Chapter I as follows, effective April 1, 1965.

1. By striking out Special Civil Air Regulations 330, 389B, 395B, 397, 411B, 430, 431, 433, 446B, 448A, 450A, and 456.

2. By amending Part 91 "General Operating and Flight Rules" as follows:

A. By amending § 91.1 to read as follows:

§ 91.1 Applicability.

(a) This part prescribes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons) within (except as provided in paragraphs (b) and (c) of this section) the United States.

(b) Each person operating an aircraft of U.S. registry in air commerce over the high seas shall comply with Annex 2 (Rules of the Air) to the convention on International Civil Aviation.

(c) Sections 91.8, 91.19, 91.45, and 91.47 also govern the operation of aircraft of U.S. registry outside of the United States so far as these sections are not inconsistent with applicable regulations of any foreign country or Annex 2 to the convention on International Civil Aviation.

B. By adding a new § 91.8 to read as follows:

§ 91.8 Prohibition against interference with crewmembers.

(a) No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of his duties aboard an aircraft being operated in air commerce.

(b) No person may attempt to cause or cause the flight crew of an aircraft being operated in air commerce to divert its flight from its intended course or destination.

C. By adding a new § 91.47 to read as follows:

§ 91.47 Emergency exits for airplanes carrying passengers for hire.

(a) Notwithstanding any other provision of this chapter, no person may operate a large airplane (type certificated under the Civil Air Regulations before April 9, 1957) in passenger-carrying operations for hire, with more than the number of occupants allowed under Civil Air Regulation § 4b.362 (a), (b), and (c), as in effect on December 20, 1951. However, an airplane type listed in the following table may be operated with up

to the listed number of occupants (including crewmembers) and the corresponding number of exits (including emergency exits and doors) approved for the emergency exit of passengers:

Airplane type	Maximum number of occupants including crewmembers	Corresponding number of exits authorized for passenger use
B-307	61	4
B-377	96	9
C-46	67	4
CV-240	53	6
CV-340 and CV-440	53	6
DC-3	35	4
DC-3 (Super)	39	5
DC-4	86	5
DC-6	87	7
DC-6B [1]	112	11
L-18	17	3
L-049, L-649, L-749	87	7
L-1049 (series)	96	9
M-202	53	6
M-404	53	7
Viscount 700 series	53	7

[1] The DC-6A, if converted to a passenger transport configuration, is governed by the maximum number applicable to DC-6B.

(b) Additional occupants may be carried if there are additional exits comparable to at least a Type II or Type IV exit as prescribed in § 25.807, but not more than eight additional occupants may be carried for each additional exit. In the case of exits not comparable to at least a Type II or Type IV exit, the Administrator may authorize a lesser number of additional occupants, after considering the type, size, and location of the exit and other pertinent factors.

(c) For airplanes having a ratio (as computed from the table in paragraph (a) of this section) of maximum number of occupants to number of exits greater than 14:1, and for airplanes that do not have at least one full-size door-type exit in the side of the fuselage in the rear part of the cabin, the first additional exit must be a floor-level exit not less than 24 inches wide, by 48 inches high, and located in the side of the fuselage in the rear part of the cabin. However, no person may operate an airplane under this section carrying more than 115 occupants unless there is such an exit on each side of the fuselage.

(d) The Administrator reduces the maximum number of occupants authorized by the table whenever the number of approved exits is less than shown in the table, after taking into account the effectiveness of the remaining exits for emergency evacuation. However, the maximum number of occupants is reduced by at least eight for each eliminated exit, and in no case may the resulting ratio of occupants to exits be greater than 14:1. In addition, there must be at least one exit on each side of the fuselage, regardless of the number of occupants.

D. By adding a new § 91.103 to read as follows:

§ 91.103 Operation of civil aircraft of Cuban registry.

No person may operate a civil aircraft of Cuban registry outside of controlled airspace.

E. By adding to the distribution table:

Former section	*Revised section*
SR 389B	91.47
SR 448A (less paragraph (2))	91.8
SR 456	91.103

3. By amending Part 127 "Certification and Operations of Scheduled Air Carriers with Helicopters" as follows:

A. By amending § 127.139 to read as follows:

§ 127.139 Certificate requirements.

(a) Each person who is directly in charge of maintenance, preventive maintenance, or alteration, and each person performing required inspections must hold an appropriate airman certificate.

(b) For the purposes of this section, a person "directly in charge" is each person assigned to a position in which he is responsible for the work of a shop or station that performs maintenance, preventive maintenance, alterations, or other functions affecting aircraft airworthiness. A person who is "directly in charge" need not physically observe and direct each worker constantly but must be available for consultation and decision on matters requiring instruction or decision from higher authority than that of the persons performing the work.

B. By amending § 127.227 to read as follows:

§ 127.227 Prohibition against carriage of weapons.

No person may, while on board a helicopter being operated under this Part, carry on or about his person a deadly or dangerous weapon, either concealed or unconcealed. This section does not apply to—

(a) Officials or employees of a municipality or a State, or of the United States, who are authorized to carry arms; or

(b) Crewmembers and other persons authorized by the air carrier to carry arms.

C. By amending the distribution table as applicable to SR 448A to read:

Former section	*Revised section*
SR 448A, paragraph (2)	127.227

D. By adding to the distribution table:

Former section	*Revised section*
40.241-1	127.139

4. By amending Part 129 "Operations of Foreign Air Carriers" as follows:

A. By adding a new § 129.23 to read as follows:

§ 129.23 Transport category cargo service airplanes: increased zero fuel and landing weights.

(a) Notwithstanding the applicable structural provisions of the transport category airworthiness regulations, but subject to paragraphs (b) through (g) of this section, a foreign air carrier may operate (for cargo service only) any of the following transport category airplanes (certificated under Part 4b of the Civil Air Regulations effective before March 13, 1956) at increased zero fuel and landing weights—

(1) DC-6A, DC-6B, DC-7B, and DC-7C; and

(2) L-1049 B, C, D, E, F, G, and H, and the L-1649A when modified in accordance with supplemental type certificate SA 4-1402.

(b) The zero fuel weight (maximum weight of the airplane with no disposable fuel and oil) and the structural landing weight may be increased beyond the maximum approved in full compliance with applicable rules only if the Administrator finds that—

(1) The increase is not likely to reduce seriously the structural strength;

(2) The probability of sudden fatigue failure is not noticeably increased;

(3) The flutter, deformation, and vibration characteristics do not fall below those required by applicable regulations; and

(4) All other applicable weight limitations will be met.

(c) No zero fuel weight may be increased by more than five percent, and the increase in the structural landing weight may not exceed the amount, in pounds, of the increase in zero fuel weight.

(d) Each airplane must be inspected in accordance with the approved special inspection procedures, for operations at increased weights, established and issued by the manufacturer of the type of airplane.

(e) A foreign air carrier may not operate an airplane under this section unless the country of registry requires the airplane to be operated in accordance with the passenger-carrying transport category performance operating limitations in Part 121 or the equivalent.

(f) The Airplane Flight Manual for each airplane operated under this section must be appropriately revised to include the operating limitations and information needed for operation at the increased weights.

(g) Each airplane operated at an increased weight under this section must, before it is used in passenger service, be inspected under the special inspection procedures for return to passenger service established and issued by the manufacturer and approved by the Administrator.

B. By adding to the distribution table:

Former section	*Revised section*
SR 411B	129.23

5. By amending Part 135 "Air Taxi Operators and Commercial Operators of Small Aircraft" to add a new § 135.64 to read as follows:

§ 135.64 Prohibition against carriage of weapons.

No person may, while aboard an aircraft being operated by an air taxi operator, carry on or about his person a deadly or dangerous weapon, either concealed or unconcealed. This section does not apply to—

(a) Officials or employees of a municipality or a State, or of the United States, who are authorized to carry arms; or

(b) Crewmembers and other persons authorized by the air taxi operator to carry arms.

6. By amending Part 141 "Pilot Schools" as follows:

A. By adding a new § 141.31 to read as follows:

§ 141.31 Special flight instruction for military personnel of a foreign government.

Notwithstanding any other provision of this chapter, a pilot school certificated under this part with a flying school rating may train personnel of any foreign government in maneuvers that are not within the approved airplane operating limitations if—

(a) An official request is made to the Administrator by an accredited representative of the foreign government;

(b) The Administrator finds that the training can be accomplished with a standard of safety equal to that maintained by the United States Air Force or Navy;

(c) The training is accomplished in accordance with appropriate United States Air Force or Navy Technical Orders; and

(d) No airplane is used to show compliance with an acrobatic maneuver required in a flight test for the issue of an airman certificate or rating, against which it has been placarded.

B. By adding to the distribution table:

Former section	*Revised section*
SR 330	141.31

7. By amending Part 171 "Non-Federal Navigation Facilities" as follows:

A. By redesignating Subpart D as Subpart E and § 171.61 as § 171.71.

B. By adding a new Subpart D to read as follows:

Subpart D—True Lights

§ 171.61 Authority to operate a true light.

(a) An applicant who certifies that he will, in accordance with applicable requirements of the FAA, establish, maintain, and operate a light as an aid to air navigation, is issued an air navigation certificate, authorizing him to operate that light as a "true light".

(b) An application for authority to operate a true light is made on Form FAA-114 "Certification and Lawful Authority to Operate a True Light".

C. By adding to the distribution table:

Former section	*Revised section*
406.17 (less (b))	171.61

8. By redesignating Special Civil Air Regulation 399D, "Provisional Certificated Maximum Weights for Certain Airplanes Operated by Alaskan Air Carriers, Air Taxi Operators in Alaska, and the Department of the Interior" as Special Federal Aviation Regulation (SFAR) 12, to be effective until October 25, 1965.

9. By redesignating Special Civil Air Regulation 407, "Basis for Approval of Modification of Airplane Types Douglas DC-3 and Lockheed L-18", as Special Federal Aviation Regulation (SFAR) 13, to be effective indefinitely.

10. By redesignating Special Civil Air Regulation 426, "Performance Credit for Transport Category Airplanes Equipped with Standby Power", as Special Federal Aviation Regulation (SFAR) 14, to be effective indefinitely.

11. By redesignating Special Civil Air Regulation 454A, "Special Operating Rule Within Certain Areas of the State of Florida and Over Waters Adjacent Thereto", as Special Federal Aviation Regulation SFAR) 15, to be effective indefinitely.

(Secs. 307, 313(a), 314, 501, 601–610, 902(c), 1102, 1110, and 1202, Federal Aviation Act of 1958, 49 U.S.C. 1348, 1354(a), 1355, 1401, 1421–1430, 1472(c), 1502, 1510, 1522)

Issued in Washington, D.C., on December 23, 1964.

N. E. HALABY,
Administrator.

[F.R. Doc. 64-13376; Filed, Dec. 29, 1964; 8:45 a.m.]

Chapter III—Federal Aviation Agency

PART 406—CERTIFICATION PROCEDURES

Recodification

CROSS REFERENCE: For a document affecting Part 406, see Chapter I of this title, F.R. Doc. 64-13376.

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release No. 33-4749]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Delivery of Prospectuses by Dealers

On September 15, 1964, in Securities Act Release No. 4726 (29 F.R. 13486, September 30, 1964), the Securities and Exchange Commission published its proposal to adopt Rules 425A (17 CFR 230.425A) and 174 (17 CFR 230.174) under the Securities Act of 1933. Rule 425A was proposed in order that dealers will be apprised more readily of their obligation to deliver a prospectus in transactions in securities as to which a registration statement has become effective under the Act. Rule 174 shortens or eliminates the statutory prospectus delivery requirements of section 4(3) of the Act for a dealer who is not an underwriter continuing to act as such or a dealer participating in a distribution in a transaction in securities constituting an unsold allotment to or subscription by such dealer in three instances.

In effect the dealer's transaction exemption in section 4(3) [1] of the Act requires all dealers, whether or not they participate in the initial distribution of a registered security, to deliver a prospectus for a designated period in connection with all transactions in such registered security in which any means or instrumentalities of interstate commerce or the mails are used, excepting only unsolicited brokers' transactions.[2]

It should be noted that a prospectus must be delivered by an underwriter continuing to act as such and by a dealer effecting transactions in securities constituting the whole or part of an unsold allotment to or subscription by such dealer as a participant in the distribution. This obligation of underwriters and dealers continue so long as they are participating in a distribution no matter how much time has elapsed since the commencement of the offering. Otherwise, a dealer effecting transactions in such securities is required to deliver a prospectus for 40 days after the registration statement becomes effective or the date the security is first bona fide offered to the public, whichever is later. However, if the issuer has not made a previous offering under an effective Securities Act registration statement, the aforementioned 40 day period is extended to 90 days.

A number of helpful comments were received in response to the above release. After further consideration of the matter and consideration of all of the comments received, the Commission has adopted the rules with certain additions and modifications.

As adopted, Rule 425A requires a statement on the cover of a prospectus stating the date on which the relevant 40 or 90 day period will expire. The rule as proposed has been revised to make clear that the statement may be set forth on the outside front or back cover page or the inside front cover page of the prospectus. The proposed rule has also been revised to provide that the statement is not required if, pursuant to Rule 174, dealers are not required to deliver a prospectus pursuant to the provisions of section 4(3)(B) of the Act or if the exemptive provisions of section 4(3) are not applicable pursuant to the provisions of section 24(d) of the Investment Company Act of 1940. Section 24(d) provides that the exemption provided by section 4(3) is not applicable in transactions in a security issued by a face-amount certificate company or in a redeemable security issued by an open-end management company or unit investment trust, if any other security of the same class is currently being offered or sold by the issuer or by an underwriter in a distribution which is not exempted from section 5 of the Act, except as otherwise provided by Commission rule or regulation.

It was pointed out in a number of comments that issuers do not always know the exact date when an offering will begin at the time a registration statement becomes effective. Therefore, the rule as adopted provides that the expi-

[1] Prior to the 1964 Amendments to the Securities Acts this exemption was contained in the third unnumbered clause of Section 4(1). The amendments to the Securities Act and the background of Rules 425A and 174 are more fully described in Securities Act Release No. 4726.

[2] The definition of "dealer" in the Securities Act of 1933 includes brokers. The brokers' transaction exemption in Section 4(4) of the Act (designated Section 4(2) prior to the 1964 Amendments) applies to brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

ration date of the period prescribed by section 4(3) of the Act and Rule 174 may be inserted in the prospectuses to be used after the effective date which must be filed pursuant to Rule 424(b) (17 CFR 230.424(b)). Before the date when the security is first offered, issuers will be required to state in the blank provided for the expiration date whether the applicable prospectus delivery period is 40 or 90 days.

As adopted Rule 174 shortens or eliminates the aforementioned 40 or 90 day statutory prospectus delivery period in the instances hereinafter discussed. The rule provides that no dealer is required to deliver a prospectus with respect to a security registered on Form S–8 (17 CFR 239.16b) (relating to certain offerings to employees), Form S–9 (17 CFR 239.22) (relating to certain non-convertible fixed interest debt securities), Form S–12 (17 CFR 239.19) (relating to American Depositary Receipts), and Form F–1 (17 CFR 239.9) (relating to voting trust certificates); except that, in the case of registration on Form S–12 or F–1, the exemption does not apply if the deposited securities are also required to be registered. It also provides that the maximum period during which dealers must deliver a prospectus will expire in 40 days if the issuer has a class of securities listed and registered on a national securities exchange under Section 12(b) of the Securities Exchange Act of 1934.

Paragraph (c) of the rule as proposed has been deleted. As proposed paragraph (c) provided that the maximum period during which dealers must deliver a prospectus expired after 40 days with respect to all registration statements which became effective on or prior to August 20, 1964, the effective date of the Securities Acts Amendments of 1964. In view of the expiration of 90 days after such effective date the Commission has determined that it is no longer necessary to include this interpretation of the Act, as amended, and has provided in lieu thereof a new paragraph (c).

New paragraph (c) of the rule as adopted relates to offerings to be made from time to time under a single registration statement. The purpose of the paragraph is to make clear in such cases, e.g., where securities are to be offered at different times by one or more of several offerees, commonly referred to as a "shelf" registration, that no new prospectus delivery period will begin for dealers trading in the offering after the first 40 or 90 day prospectus delivery period has expired following the initial offering of any of the registered securities for the accounts of any of the offerees.

The rule as adopted provides that its special provisions are inapplicable if the registration statement was the subject of a stop order. It also reserves to the Commission the power to modify the applicable period by order upon application or on its own motion in particular cases. Since the rule is addressed only to the obligation of dealers to deliver a prospectus in the trading market, provision is inserted to make clear that it does not apply to an underwriter continuing to act as such, or to a dealer participating in a distribution in a transaction in the registered securities constituting an unsold allotment to or subscription by such dealer.

Other suitable relaxations of the dealers' exemption in section 4(3) will doubtless become apparent as the Commission and the financial community gain experience under the amended requirements of the Securities Act. Meanwhile, provision is made in Paragraph (d)(2) of the rule for variations from this pattern upon application to the Commission in appropriate cases.

Commission action. Part 230 of Title 17, Chapter II of the Code of Federal Regulations is amended by adding new §§ 230.425a and 230.174 to read as follows:

§ 230.425a Statement required on prospectus regarding delivery of prospectuses by dealers.

(a) The statement set forth in paragraph (b) of this section shall be set forth on the outside front or back cover page or on the inside front cover page of every prospectus, inserting the expiration date of the period prescribed by section 4(3) of the act and § 230.174 thereunder; except that, this section shall not apply if, pursuant to § 230.174, dealers are not required to deliver a prospectus pursuant to the provisions of section 4(3)(B) of the act, or if the exemption provided by section 4(3) of the act is not applicable pursuant to the provisions of section 24(d) of the Investment Company Act of 1940. If the said expiration date is not known on the effective date of the registration statement it may be inserted in the prospectus filed pursuant to § 230.424(b). Prior to such time the applicable period prescribed in section 4(3) of the act and § 230.174 thereunder shall be included in the blank.

(b) The following legend required by paragraph (a) of this section shall be printed in bold-face type or italic type at least as large as eight point modern type and at least two points leaded:

Until _____ (insert date) all dealers effecting transactions in registered securities, whether or not participating in this distribution, may be required to deliver a prospectus. This is an addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

§ 230.174 Delivery of prospectus by dealers; exemptions under section 4(3) of the act.

The obligations of a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transactions) to deliver a prospectus in transactions in a security as to which a registration statement has been filed taking place prior to the expiration of the 40 or 90 day period specified in section 4(3) of the act after the effective date of such registration statement or prior to the expiration of such period after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later, shall be subject to the following provisions:

(a) No prospectus need be delivered if the registration statement is on Forms S–8 (17 CFR 239.16b), S–9 (17 CFR 239.22), S–12 (17 CFR 239.19), or F–1 (17 CFR 239.9): *Provided*, In the case of a registration statement on Forms S–12 (17 CFR 239.19) or F–1 (17 CFR 239.9), this provision shall not apply if registration of the deposited securities is also required.

(b) If the issuer has a class of security listed and registered on a national securities exchange pursuant to section 12(b) of the Securities Exchange Act of 1934, the period during which a prospectus must be delivered shall be 40 days.

(c) Where a registration statement relates to offerings to be made from time to time no prospectus need be delivered after the expiration of the initial prospectus delivery period specified in section 4(3) of the act or in paragraphs (a) or (b) of this section following the first bona fide offering of securities under such registration statement.

(d) Notwithstanding the foregoing, the period during which a prospectus must be delivered by a dealer shall be:

(1) As specified in section 4(3) of the act if the registration statement was the subject of a stop order issued under section 8 of the act; or

(2) As the Commission may provide upon application or on its own motion in a particular case.

(e) Nothing in this section shall affect the obligation to deliver a prospectus pursuant to the provisions of section 5 of the act by a dealer who is acting as an underwriter with respect to the securities involved or who is engaged in a transaction as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

(Sec. 12, 78 Stat. 580, 15 U.S.C. 77d; sec. 19, 48 stat. 85, as amended, 15 U.S.C. 77d)

Effective date. The amendment shall become effective on January 25, 1965.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

DECEMBER 23, 1964.

[F.R. Doc. 64–13395; Filed, Dec. 29, 1964; 8:46 a.m.]

[Release 40–4105]

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Periodic Calculation of Current Net Asset Value of Redeemable Security

On July 2, 1964, in Investment Company Act Release No. 4006, and in the FEDERAL REGISTER on July 10, 1964 (29 F.R. 9456), the Securities and Exchange Commission published notice that it had under consideration the adoption of a proposed § 270.2a–4 (Rule 2a–4 under the Investment Company Act of 1940 ("Act")) and invited the comments of

interested persons. Upon consideration of the comments received, the Commission has determined pursuant to the authority conferred by sections 38(a) and 22 of the Act to adopt § 270.2a–4 in the form set forth below.

Section 38(a) authorizes the Commission to make rules and regulations, inter alia, defining "accounting, technical, and trade terms" used in the Act. "Current net asset value" is a term used in section 22 of the Act relating to "distribution, redemption, and repurchase of redeemable securities," and the concept is employed in the definition of the term "redeemable security" in section 2(a)(31) of the Act.

The Commission's experience in the administration of the Act and its analysis of data provided by the periodic inspection of books and records maintained by registered investment companies pursuant to section 31 of the Act indicate that uniformity with respect to the calculation of net asset value of redeemable securities issued by registered investment companies would be in the public interest and in the interest of investors. Accordingly, pursuant to the authority conferred by sections 38(a) and 22 of the Act, the Commission has promulgated § 270.2a–4 defining the term "current net asset value" as it is used in the Act with reference to redeemable securities issued by a registered investment company.

The Commission has considered that the public interest and the interest of investors require that the rule be effective as promptly as is reasonably practicable in order that the current net asset value of redeemable securities currently being distributed, redeemed, and repurchased by registered investment companies be appropriately calculated. Consideration has also been given to the obligations of registered investment companies to file reports under the provisions of the Act and the rules thereunder relating to the fiscal periods of said companies, and to the substantial number of registered investment companies which will begin new fiscal periods on January 1, 1965. The Commission therefore finds that there is good cause for the rule to become effective on January 1, 1965. Accordingly, the effective date of the rule shall be January 1, 1965.

The text of § 270.2a–4 is as follows:

§ 270.2a–4 Definition of "Current Net Asset Value" for use in computing periodically the current price of redeemable security.

(a) The current net asset value of any redeemable security issued by a registered investment company used in computing periodically the current price for the purpose of distribution, redemption, and repurchase means an amount which reflects calculations, whether or not recorded in the books of account, made substantially in accordance with the following, with estimates used where necessary or appropriate:

(1) Portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company.

(2) Changes in holdings of portfolio securities shall be reflected no later than in the first calculation on the first business day following the trade date.

(3) Changes in the number of outstanding shares of the registered company resulting from distributions, redemptions, and repurchases shall be reflected no later than in the first calculation on the first business day following such change.

(4) Expenses, including any investment advisory fees, shall be included to date of calculation.

(5) Dividends receivable shall be included to date of calculation either at ex-dividend dates or record dates, as appropriate.

(6) Interest income and other income shall be included to date of calculation.

(b) The items which would otherwise be required to be reflected by paragraph (a)(4) and (6) of this section need not be so reflected if cumulatively, when netted, they do not amount to as much as one cent per outstanding share.

(c) Notwithstanding the requirements of paragraph (a) of this section, any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day.

(Sec. 22, 38(a), 54 Stat. 823, 841, 15 U.S.C. 80a–22, 80a–37)

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

DECEMBER 22, 1964.

[F.R. Doc. 64–13396; Filed, Dec. 29, 1964; 8:46 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter V—Bureau of Employment Security, Department of Labor

PART 602—COOPERATION OF UNITED STATES EMPLOYMENT SERVICE AND STATES IN ESTABLISHING AND MAINTAINING A NATIONAL SYSTEM OF PUBLIC EMPLOYMENT OFFICES

Foreign Agricultural Labor

Expiration of Public Law 78 on December 31, 1964, thereby indicating a Congressional intent to end reliance on Mexican Braceros for agricultural work in the United States, requires regulations effecting an orderly transition to the use of United States workers in areas where reliance has previously been placed upon foreign workers. These regulations, hereinafter set forth, are issued to carry out the function of the Secretary of Labor in advising the Attorney General, in accordance with his request under section 214 of the Immigration and Nationality Act of 1952, as to whether unemployed persons capable of performing such agricultural labor can be found in this country. Of primary consideration in issuing these Regulations is the principle that foreign workers will not be admitted where unemployed domestic workers are available and, in no event, will be admitted under circumstances adversely affecting domestic wage levels.

In response to this Congressional direction and after due consideration of the evidence and views presented at hearings which were held pursuant to notice (29 F.R. 15191) at Washington, D.C. on November 30, 1964; Miami, Fla., on December 2; Dallas, Tex., on December 4; and San Francisco, Calif., on December 7, 8, and 9, the Regulations set forth below specifying the terms and conditions which must be offered to domestic workers before certification will be made for the admission of foreign workers under Public Law 414 have been adopted.

Because these rules constitute general statements of agency procedure and policy, further notice of proposed rule making, public participation, and delay in effective date are not required by section 4 of the Administrative Procedure Act (5 U.S.C. 1003), I do not believe additional proceedings or delay would serve a useful purpose here.

Now, therefore, pursuant to regulations issued by the Commissioner of Immigration and Naturalization (8 CFR 214.2(h); 29 F.R. 11959) implementing provisions of the Immigration and Nationality Act (8 U.S.C. 1184(c)), I hereby revise 29 CFR 602.10, effective immediately, to read as follows:

§ 610.10 Certification and use of foreign labor for agricultural employment.

(a) Any agricultural employer with a forseeable labor shortage remaining after reasonable efforts utilizing all sources of available domestic workers, including the interstate clearance process, may request through the appropriate State agency the certification of need for foreign labor. Before such certification will be made by the appropriate Regional Office of the Bureau of Employment Security, it must be shown that:

(1) Reasonable efforts have been made and will continue to be made to obtain domestic workers for the period for which these workers are requested. "Reasonable efforts" will include full use of (i) day-haul operations in accordance with the general practices of other employers in the area, or, in the absence of local day-haul operations, day-haul operations in accordance with the general practices within the State; (ii) other appropriate recruitment efforts; and (iii) the interstate clearance process for recruitment in areas within a reasonable distance, including use of the Annual Worker Plan, where practical. (In order to recruit workers from out of State, a minimum period of 15 days prior to the date of need will be required by the Labor-supply State agency for positive recruitment. In addition, the offer for local workers must be at the same rate which is specified on the date of need in the clearance order, or a request for foreign workers will be denied.)

(2) Employment of such labor will not adversely affect the wages or working conditions of domestic workers similarly employed.

(b) On and after January 1, 1965, the State agency will not process a request for workers more than 60 days nor less than 30 days prior to the date of need; and such request shall be reviewed by the State agency not more than 15 days prior to the date of need and the State agency will advise the appropriate Bureau of Employment Security regional office whether the conditions necessitating foreign workers previously certified to by the State agency still prevail, or whether the request should be cancelled or revised.

(c) No certification shall be made for the admission of foreign workers under Section 214 of the Immigration and Nationality Act for agricultural employment in the United States unless the following criteria have been followed and adhered to:

(1) Effective January 1, 1965, and through March 31, 1965:

(i) Employment offered to domestic workers must provide for wage payment rates which are no less than the applicable amount listed on Schedule "A" of paragraph (d) of this section for the State in which the work is being performed, except that where the prevailing rate for the crop activity in the area is higher, the higher rate shall be paid. Piece rates shall be designed to produce hourly earnings at least equivalent to the prescribed hourly rates and in no event shall the worker be paid less than the prescribed hourly rate.

(ii) Except as otherwise specifically provided, domestic workers must be offered, as a minimum, all the terms and conditions of employment that are offered to Mexican workers under the Migrant Labor Agreement of 1951, as amended, including a written contract embodying those conditions.

(iii) Family housing must be provided where feasible and necessary.

(2) Effective April 1, 1965:

(i) Employment offered to domestic workers must provide for wage payment rates which are no less than the applicable amount listed on Schedule "B" of paragraph (d) of this section for the State in which the work is being performed, except that where the prevailing rate for the crop activity in the area is higher, the higher rate shall be paid. Piece rates shall be designed to produce hourly earnings at least equivalent to the prescribed hourly rates and in no event shall the worker be paid less than the prescribed hourly rate.

(ii) Except as otherwise specifically provided in this section, domestic workers must be offered, as a minimum, all the terms and conditions of employment that are offered to Mexican workers under the Migrant Labor Agreement of 1951, as amended, including a written contract embodying those conditions.

(iii) Family housing must be provided where feasible and necessary.

(3) Effective January 1, 1965:

(i) Reasonable costs of transportation to and from the place of employment must be borne by the employer.

(ii) No certification shall be made permitting the employment of any foreign worker for a period exceeding 120 days; nor shall any certification be made with respect to any petition of any employer which would result in the employment of foreign workers by such employer for more than 120 days in any calendar year, except in specific cases, when necessary to avoid undue hardship, in accordance with criteria prescribed by the Department of Labor.

(iii) No certification shall be made with respect to the petition of any employer who has been found by the Secretary of Labor or his designated representative to have failed, without good cause, to comply with the work contracts entered into with any domestic or foreign agricultural workers, or who has in his employ or is found to have had in his employ after the effective date of these regulations, any foreign worker when such employer knows or has reasonable grounds to believe or suspect or by reasonable inquiry could have ascertained that such foreign worker is not lawfully within the United States.

(iv) When domestic workers become available for jobs in which foreign workers are employed, the domestic workers must be given preference.

(v) No foreign workers shall be assigned to fill any job to which referral of United States workers would be prohibited under regulations or policies of the United States Department of Labor governing the referral of workers to jobs involved in strikes or other labor disputes.

(4) These criteria shall not be applicable to Basque sheepherders.

(d) The schedules referred to in paragraph (c) are as follows:

SCHEDULE A

State:	*Wage rate*
Arizona	$1.05
California	1.25
Connecticut	1.25
Florida	.95
Massachusetts	1.25
New Mexico	.90
Texas	.90

SCHEDULE B

State:	*Wage rate*
Arizona	$1.25
Arkansas	1.15
California	1.40
Colorado	1.30
Connecticut	1.40
Florida	1.15
Indiana	1.25
Kansas	1.40
Maine	1.25
Massachusetts	1.30
Michigan	1.25
Minnesota	1.40
Montana	1.40
Nebraska	1.40
New Hampshire	1.30
New Jersey	1.30
New Mexico	1.15
New York	1.30
Oregon	1.30
Rhode Island	1.30
South Dakota	1.40
Texas	1.15
Utah	1.40
Vermont	1.30
Virginia	1.15
West Virginia	1.15
Wisconsin	1.30
Wyoming	1.25

Signed at Washington, D.C., this 19th day of December 1964.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 64-13436; Filed, Dec. 29, 1964; 8:50 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 6788]

PART 146—SALE OF REBUILT AUTOMOTIVE PARTS AND ACCESSORIES ON AND AFTER JANUARY 1, 1965

Tax-Exempt Sale of Rebuilt Automotive Parts and Accessories

The following rules, prescribed under section 5 of the Act of October 13, 1964 (Public Law 88-653, 78 Stat. 1086), relate to the exemption from the tax imposed by section 4061(b), applicable under section 4063(c) of the Internal Revenue Code of 1954 in the case of rebuilt automotive parts and accessories sold on or after January 1, 1965.

The rules set forth herein are to remain in force and effect until superseded by applicable amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48). Until such amendments are made, the regulations set forth herein with respect to the subject matter within the scope thereof supersede the regulations set forth in the Manufacturers and Retailers Excise Tax Regulations.

In order to prescribe temporary rules relating to the subject matter referred to above, the following rules are hereby adopted:

§ 146.1-1 Tax-exempt sales of rebuilt automotive parts or accessories.

Section 4063(c) of the Internal Revenue Code of 1954, as added by section 5 of the Act of October 13, 1964 (Public Law 88-653, 78 Stat. 1086), provides that "under regulations prescribed by the Secretary or his delegate" the tax imposed by section 4061(b) shall not apply in the case of rebuilt parts or accessories. Section 4063(c) applies with respect to rebuilt parts and accessories sold on or after January 1, 1965. In accordance with the foregoing it is hereby provided that the rebuilding of a part or accessory on or after January 1, 1965, shall not be treated as the "manufacture" of such part or accessory and, accordingly, the sale of a rebuilt part or accessory on or after such date shall not be subject to the tax imposed by section 4061(b). Therefore, a rebuilder may not, on and after January 1, 1965, purchase new parts or accessories free of tax for use in the rebuilding by him of parts or accessories. Furthermore, he must pay tax under the provisions of section 4218 on all new parts or accessories manufactured by him, or acquired by him free of tax under section 4221(a)(1), which are used by him on or after January 1,